IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4309 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DECD.PATEL KANTIBHAI HARGOVINDBHAI
Versus
STATE OF GUJARAT

Appearance:

MR BS PATEL for Petitioner No. 1
MRS RANJAN B PATEL for Petitioners No. 1-1/2-1/2
MD AD OZA, GP for Respondents No. 1-2,4-5
MR ND GOHIL for Respondent No. 3

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 01/02/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

1. By this petition the petitioners have sought the direction against the respondents authorities directing them to issue notification u/S. 48 of the Land Acquisition Act, 1894 (for short 'the Act') by invoking the provisions of Article 226 of the Constitution of India.

2. The petitioners are the sons of deceased Patel Kantibhai Hargovindbhai, who died on 14/10/2000. One brother of petitioners - Kirtanbhai Kantibhai is residing in United States. Though he is not available at present in India, he is supporting the petitioners as per the contentions of the petitioners. The power of attorney holder Bhupendra Bhagwanbhai was also the power of attorney of deceased Patel Kantibhai Hargovindbhai and he has filed Special Civil Application No. 3756 of 2001 before this Court after the death of Kantibhai Hargovindbhai, but he was under the impression that as he is the power of attorney holder, the petition can be filed on behalf of deceased person. The petitioners have also therefore, contended that the petition filed by the power of attorney holder on behalf of the dead person, Special Civil Application No. 3756 of 2001 was a nullity and, therefore, they are entitled to file this writ petition.

3. The respondent authority issued a notification u/S. 4 of the Act on 30/10/1997. It is the contention of the petitioners that they have not been served with the said notification. Notification u/S. 6 of the Act was followed on 22/10/1998. It is also the contention of the petitioners that the copy of the said notification was also not served on the petitioners.

4. Petitioners have further contended that they were served with notice u/S. 9(3) of the Act and they approached the Civil Court at Sankheda by filing Regular Civil Suit No. 185 of 1999.

5. Petitioners have also contended that the Principal Secretary of the respondent no. 1 had recommended for taking a decision in the meeting dated 7/2/2000 for dropping the acquisition proceedings against the petitioners and directed the respondent no. 4 to proceed for the acquisition of other land. The suit was, therefore, withdrawn. Since no action has been taken by respondents nos. 4 and 5, the respondent no. 3 again

directed the concerned officers to drop the proceedings of Acquisition Case No. 58 of 1997 vide letter dated 30/11/2000. Even then the petitioners have received notice for handing over possession of the land as the award has been passed u/S. 11 of the Act on 17/5/2000 in respect of their agricultural land situated in the sim of village Sarsinda in Taluka Sankheda. Therefore, they have filed this petition by invoking the provisions of section 48 of the Act.

6. In so far as the maintainability of second petition by the heirs of the deceased owner of the agricultural land is concerned, the earlier Special Civil Application No. 3756 of 2001 will not constitute any ban or bar as the earlier petition was filed by the power of attorney holder of a deceased. Therefore, the earlier petition in so far as the deceased person, who was a petitioner no. 1 in that petition, was concerned, it was a nullity. Therefore, the contention that the second petition is not competent, cannot be accepted.

7. After having given our anxious thoughts and considerations to the submissions and the factual profile of the present petition, we are of the clear opinion that this petition is meritless and is required to be rejected. Firstly the petitioners have already availed the alternative efficacious remedy in Civil Court by filing Civil Suit in Sankheda Court, therefore, this petition cannot be entertained. Secondly the provisions of section 48, in the present case, will not be attracted. There is no any Government decision to withdraw from acquiring the lands of the petitioners. Section 48 of the Act provides that except in cases provided for u/S. 36 the Government is always at liberty to withdraw from acquisition any land of which possession has not been taken. When Government takes such a decision for withdrawal from such acquisition, the Collector has to determine the amount of compensation due for damage suffered by the owner in consequence of the notice or of any proceedings therein and the land owners are entitled to such compensation. We have not been able to understand as to how the provision of Section 48 has been pressed into service in this petition when factually there is no any decision of the Government u/S. 48 of the Act. On the contrary, it has been noticed that the acquisition proceedings are at an advance stage and notice under section 9 sub-section (3) of the Act is also served on the petitioners. Therefore, we are of the clear opinion that the provisions of Section 48 will not be attracted to the facts of the present case.

8. The provisions of Article 226 of the Constitution of India are plenary, extraordinary, discretionary and equitable. Such powers cannot be invoked by the present petitioners who have no right to seek any relief u/S. 48 of the Act. The petitioners cannot be permitted to invoke such powers on the premise that provisions of section 48 of the Act are attracted. As we have observed hereinabove, the section 48 is not at all applicable in the present case and again a remedy is provided even in case of any conscious decision of the Government for withdrawal of the acquisition proceedings. It may also be mentioned again that petitioners have also as such availed alternative efficacious remedy in Civil Court by filing Civil Suit in respect of the same disputed land. Therefore, this petition is meritless and is required to be rejected. Accordingly, it is rejected. Rule discharged with costs.

* Pansala.